

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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MAR 28 1988

Federal Communications Commission  
Office of the Secretary

MAR 30 1988

AM BRANCH

93-102

BP-871007AI

In re Application of

AMERICOM, A California  
Limited Partnership  
Station KHTX(FM) Am  
Truckee, California

For Major Modification of  
Facilities

TO: The Chief, Mass Media Bureau

PETITION TO DENY

Constant Communications Company of Nevada, Inc., the

I. This Petition Is Timely Filed

1. The KHTX application appeared on a Public Notice, Report No. A-134, released February 25, 1988 which assigned a cut-off date of March 28, 1988 for the filing of petitions to deny. This petition is timely filed in response to that public notice.

II. Petitioner Has Standing To File This Petition

2. Petitioner's station, KQLO(AM) is licensed to Reno, Nevada. KHTX's proposed relocation to Sparks, Nevada will place it within the Reno radio market. Furthermore, the contours of KHTX and KQLO will overlap and the two stations will be competing for listeners and advertisers. Therefore, KQLO has standing to file this petition under Section 309 of the Communications Act. See e.g. American Homes Stations of Florida, Inc., 40 RR 2d 1241 (1977).

III. KHTX's Proposed Relocation Violates Section 307(b) of the Communications Act

3. Section 307(b) of the Communications Act provides that in considering applications for modifications of licenses, "the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." KHTX is Truckee, California's only local broadcast service and now KHTX

is proposing to abandon Truckee in favor of Sparks, Nevada which is well served.

4. In support of its application to change its community of license, KHTX argues that it has had trouble in locating a

substitute. See Tal-Flo Broadcasters, Inc., 46 RR 2d 949 (1979). According to longstanding Commission precedent, Section 307(b) of the Act is applicable to applications for the removal of a station from one community to another separate community, even though no competitive application is involved. In such a case, Section 309(a) of the Communications Act does not prevent the Commission from considering the comparative needs of the two communities. See Ark-Valley Broadcasting Co., Inc., 7 RR 77 (1951). In WKYR, Inc., 24 RR 1097 (1963), an application to move a station from Keyser, West Virginia to Cumberland, Maryland was designated for hearing on an issue as to whether moving a station from a community and county, neither of which had any other station licensed to it, to a community in another state with two broadcast stations licensed to it, would result in an equitable distribution of broadcast service. In the WKYR case, the Commission remarked that while Cumberland was presently receiving service from the station, and Keyser would continue to receive service, the question was one of allocation of local broadcast outlets. Here, the situation is far worse. KHTX is proposing to locate south of Sparks, Nevada, near Reno, and the maps submitted with its application indicate that Truckee will not continue to receive service. Therefore, in the event that the KHTX application is not denied outright, it must be designated for an evidentiary hearing.

V. Conclusion

In sum, the application filed by AMERICOM, a California Limited Partnership, to change the community of license of Station KHTX(FM) from Truckee, California to Sparks, Nevada raises serious Section 307(b) concerns which require denial of the application or designation for hearing.

Respectfully submitted,

CONSTANT COMMUNICATIONS COMPANY  
OF NEVADA, INC.

BY Kathryn R. Schmeltzer  
Kathryn R. Schmeltzer

Its Attorneys

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& Leader  
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Dated: March 28, 1988

EXHIBIT A

## Help-U-Sell® by Drakulich Realty

March 25, 1988

Constant Communications  
Marin Ship  
Yacht Harbor  
Sausalito, CA 94965

Dear Mr. Constant:

I have researched the Truckee area for a site location on which to put radio transmitting towers.

There are sites available which will fit both size, and location. These sites are available for purchase and/or lease. *Zonny [initials]*

If further information is desired, please contact me at your earliest convenience at which time I will contact real estate brokers in the Truckee, California area for more specific details.

Sincerely,

  
Bryan J. Drakulich

DECLARATION

I, Frederic W. Constant, hereby state under penalty of perjury, that I have reviewed the foregoing "Petition to Deny" and the facts stated therein, except for those of which official notice may be taken are true and correct to the best of my knowledge, information and belief.

Frederic W. Constant

Dated: March 26, 1988

CERTIFICATE OF SERVICE

I, Tonya Jennings, do hereby certify that I have this 28th day of March, 1988, mailed copies of the foregoing "Petition to Deny" by First Class U.S. Mail, postage prepaid to the following:


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Tonya Jennings

\*By Hand